

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

NICHOLAS BENEDICT §
v. § CIVIL ACTION NO. 6:14cv712
THOMAS SIMON, III §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Nicholas Benedict, a former prisoner of the Texas Department of Criminal Justice, Correctional Institutions Division proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges. The named Defendants are Sgt. Thomas Simon and former TDCJ officer Tyler Jones.

Benedict complained of an alleged use of excessive force on August 9, 2013. Simon answered the lawsuit and filed a motion for summary judgment, but service of process on Jones was returned unexecuted.

After review of the pleadings and the summary judgment evidence, the Magistrate Judge issued a Report recommending that Simon's motion for summary judgment be granted. The Magistrate Judge also concluded that the granting of Simon's motion for summary judgment would operate to Jones' benefit and that Benedict's claims against Jones had no arguable basis in law and failed to state a claim upon which relief may be granted. The Magistrate Judge therefore recommended that the lawsuit be dismissed in its entirety.

A copy of the Magistrate Judge's Report was sent to Benedict's last known address, return receipt requested, but no objections have been received; accordingly, he is barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the District Court. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 44) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the Defendant Thomas Simon's motion for summary judgment (docket no. 34) is **GRANTED** and the claims against Simon are **DISMISSED WITH PREJUDICE**. It is further

ORDERED that the Plaintiff's claims against the Defendant Tyler Jones are **DISMISSED WITH PREJUDICE** as frivolous and for failure to state a claim upon which relief may be granted. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby **DENIED**.

So **ORDERED** and **SIGNED** this 4 day of **January, 2017**.



Ron Clark, United States District Judge